

APPEAL NO. 010744

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 12, 2001. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain compensable injury either in the form of an occupational disease or a specific incident injury; that the date of injury of the alleged specific incident injury is _____; that the claimant did not prove a date of injury for the alleged repetitive trauma injury; and that the claimant timely reported her claimed injury of _____. In her appeal, the claimant essentially argues that the hearing officer's determination that she did not sustain a compensable injury is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury either as a result of a specific incident on _____, or as a result of performing repetitively traumatic activities at work. That question presented a question of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer resolves the conflicts and inconsistencies in the evidence, and determines what facts have been established from the evidence. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ; St. Paul Fire & Marine Ins. Co. v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer specifically noted that the claimant's testimony "was inconsistent, and not credible." The claimant attempted to proceed primarily on the theory that she was injured on _____, lifting a tray of dirty dishes at work. However, the evidence indicates that the claimant's treating doctor denies that she sustained a specific incident injury and instead opines that the claimant's injury was a result of performing repetitively traumatic activities, an assertion denied by the claimant at the hearing. The hearing officer was acting within her province as the fact finder in determining that the claimant "clearly did not meet her burden of proof, with respect to the compensability of the claimed injury, either as an occupational disease or as a specific incident." The hearing officer's determination in that regard is not so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no basis exists for us to reverse the hearing officer's injury determination on appeal.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge